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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------------------|------------------------|
| 10/813,819 | 03/31/2004 | Spunky A. Raymond | 1842-0010 | 5056 |
| 28078 7590 11/24/2009 MAGINOT, MOORE & BECK, LLP CHASE TOWER 111 MONUMENT CIRCLE SUITE 3250 INDIANAPOLIS, IN 46204 | | | EXAMINER WOODALL, NICHOLAS W | |
| | | | ART UNIT 3775 | PAPER NUMBER |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/813,819

Applicant(s)

RAYMOND ET AL.

Examiner

Nicholas Woodall

Art Unit

3775

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 September 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8, 12, 14-18, 22, 23 and 26-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8, 12, 14-18, 22 and 23 is/are allowed.
- 6) ☒ Claim(s) 26-28 and 30 is/are rejected.
- 7) ☒ Claim(s) 29 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 2nd, 2009 has been entered.

Double Patenting

2. Claim 29 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 22. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 26-28 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Person (U.S. Patent 5,997,552) in view of Woods (U.S. Patent 5,190,560) and in view of Di Giovanni (U.S. Patent 4,478,220).

Person discloses a device comprising a track assembly defining a channel capable of sequentially receiving a plurality of wafers from an introduction end capable of receiving wafers, to a discharge end capable of being positioned within a body space. The track assembly further includes a first track (72) defining a wafer channel, a second track (90) coupled to the first track and defining a pusher channel (95), and an advancement mechanism (52, 80, 82, 85) capable of being slid within the pusher channel and capable of operating on a wafer within the wafer channel to advance the wafer in a first direction along the wafer channel toward the distal end. Person discloses a device wherein the advancement mechanism includes a portion (52) disposed within the pusher channel and at least one finger projection (80, 82, 85) from the portion into the wafer channel capable of pushing a wafer within the wafer channel. The claim does not limit the finger to be projecting directly from the portion. The two portions are indirectly connected at the proximal end of the device as best shown in Figure 7 of the reference. Person discloses a device wherein said pusher channel defines a discharge opening at the discharge end capable of discharging a wafer into a body space, wherein the wafer channel communicated with the pusher channel adjacent the discharge end, and the track assembly further including a means for diverting a wafer from the wafer channel into the pusher channel (75 and 94) as the wafer is conveyed along the wafer channel. Person discloses a device wherein the means for diverting includes a spring

arm (94) mounted within the wafer channel and capable of guiding a wafer from the wafer channel to the pusher channel. Person discloses a device further comprising an advancement gun supporting the track assembly and having an operable trigger operably coupled to the advancement mechanism such that depressing the trigger slides the advancement mechanism in the first direction within the pusher channel. Person discloses a device wherein the advancement gun includes a housing, and the trigger is capable of being pivotally mounted within the housing. Person discloses a device wherein the advancement gun includes a linkage coupled between the trigger and the advancement mechanism capable of translating pivotal movement of the trigger into linear movement of the mechanism within the pusher channel. Person fails to disclose the wafer channel further comprising an opening at the introduction end sized and configured to receive wafers, the device further comprising a cartridge carrying a plurality of wafers coupled to the wafer channel at the opening, and a plurality of prongs for preventing retrograde movement of a wafer within the wafer channel in a second direction opposite the first direction. Woods teaches a device further comprising a cartridge including a plurality of wafers, wherein the cartridge is connected to the advancement gun of the device via a mounting mechanism comprising a pair of locking cams (82) on the cartridge and a pair of latching surfaces (86) on the advancement gun at an opening of a wafer channel defined by a first track in order to provide the device with enough elements, such as wafers, to complete a surgical procedure without having to refill the device. Di Giovanni teaches a device comprising a track assembly that further includes a plurality of resilient prong members formed along the upper and lower

surfaces of the channel within the track assembly (claims 8-10 and 15; column 12 lines 22-68 and column 13 lines 1-42) in order to prevent backwards movement of the elements being moved through the device (column 13 lines 34-36). It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the device of Person further comprising a cartridge having a plurality of wafers, wherein the cartridge is connected to the advancement gun of the device via a mounting mechanism at an opening of the wafer channel defined by the first track in view of Woods and a plurality of resilient prongs members formed along the upper and lower surfaces of the channel within a track assembly in view of Di Giovanni in order to provide the device with enough elements, such as wafers, to complete a surgical procedure without having to refill the device, and to prevent backwards movement of the elements being moved through the device.

The device of Person as modified by Woods as further modified by Di Giovanni discloses a device the plurality of prongs for preventing retrograde movement includes at least one resilient prong arranged within the track assembly channel capable of preventing movement of a wafer in the second direction and to deflect as a wafer passes the prong in the first direction. The device of Person as modified by Woods as further modified by Di Giovanni discloses a device wherein the plurality of prongs for preventing retrograde movement includes a plurality of resilient prongs spaced along the length of the track assembly channel from the introduction end to the discharge end and the plurality of resilient prongs are provided in opposing pairs of prongs disposed on opposite sides of the track assembly channel.

Allowable Subject Matter

4. Claims 8, 12, 14-18, 22, and 23 are allowed.

Response to Arguments

5. Applicant's arguments with respect to claims 8, 12, 14-18, 22, 23, and 25-30 have been considered but are moot in view of the new ground(s) of rejection. The examiner has provided new grounds of rejection rejecting the newly filed claims as discussed above.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicholas Woodall whose telephone number is (571)272-5204. The examiner can normally be reached on Monday to Friday 8:00 to 5:30 EST..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Barrett can be reached on 571-272-4746. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nicholas Woodall/
Examiner, Art Unit 3775

/Thomas C. Barrett/
Supervisory Patent Examiner, Art
Unit 3775